

12-218



CHAIRMAN

Federal Communications Commission

Washington, D.C.

August 20, 2003

RECEIVED

SEP 11 2003

The Honorable Ginny Brown-Waite
U.S. House of Representatives
1516 Longworth House Office Building
Washington, D.C. 20515

FEDERAL COMMUNICATIONS COMMISSION

Dear Congresswoman Brown-Waite:

Thank you for your July 28, 2003, letter expressing concerns over the Commission's regulation of intrastate telemarketing calls, and with certain rules that appear to be inconsistent with those adopted by the Federal Trade Commission ("FTC").

The Commission released a *Report and Order* on July 3, 2003, amending its rules on telemarketing under the Telephone Consumer Protection Act ("TCPA"). In that *Order*, the Commission noted that "[t]he states have a long history of regulating telemarketing practices, and we believe that it is critical to combine the resources and expertise of the state and federal governments to ensure compliance with the national do-not-call rules." As a result, the Commission declined to preempt state use of their own do-not-call databases, or prohibit states from enforcing state regulations that are consistent with the TCPA rules. In addition, the TCPA specifically prohibits the preemption of any state law that imposes more restrictive intrastate requirements.

As your letter indicates, however, a few states have adopted exemptions from state do-not-call programs that are not recognized under the federal do-not-call regulations. After careful review of the extensive record generated in this proceeding, the Commission concluded that application of such less restrictive state exemptions directly conflicts with federal objectives in protecting consumer privacy rights under the TCPA. Although states traditionally have jurisdiction over intrastate calls, Congress enacted the TCPA and amended Section 2(b) of the Communications Act of 1934 to give the Commission jurisdiction over both interstate and intrastate telemarketing calls.

While Section 2(b) of the Communications Act of 1934 provides the Commission with authority over both intrastate and interstate telemarketing calls under the TCPA, the FTC's jurisdiction does not extend to intrastate calls. Therefore, we believe that the Commission's decision was a matter not of maintaining consistency with the FTC's rules, but of the agencies' jurisdictional differences. I would also note that while numerous states have chosen to enact state do-not-call lists, many states have not adopted any do-not-call rules. The Commission's authority to enforce both interstate and intrastate violations of the TCPA in these states is essential to protect consumer privacy. In addition, because the TCPA applies to both interstate and intrastate communications, the minimum requirements for compliance are therefore uniform.

Re: [unclear] 2

throughout the nation, reducing the potential for consumer confusion, and the regulatory burdens on the telemarketing industry

I appreciate both your support for the federal do-not-call list and its rules and regulations, and the leadership demonstrated by the State of Florida in enacting its state telemarketing laws. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Powell", written over a horizontal line.

Michael K. Powell

GINNY BROWN-WAITE
6TH DISTRICT, FLORIDA

COMMITTEE ON THE BUDGET

COMMITTEE ON
FINANCIAL SERVICES

COMMITTEE ON
VETERANS AFFAIRS

Congress of the United States
House of Representatives
Washington, DC 20515

July 28, 2003

1518 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-1002

DISTRICT OFFICES
20 NORTH MAIN STREET, SUITE 200
BROOKSVILLE, FL 34601
(352) 798-8354
(866) GWAITE5

36008 MERIDIAN AVENUE, SUITE A
DADE CITY, FL 33525
(352) 567-6707
(866) GWAITE5

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The Honorable Michael K. Powell
Chairman, Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Dear Chairman Powell:

As a staunch supporter of my constituents' right-to-privacy I co-sponsored H.R. 395, the *Do-Not-Call Implementation Act*, because I believed my constituents had the right to be protected from telemarketer harassment and thieving callers.

As you are aware, the State of Florida had already passed No-Solicitations legislation which, in 1999, served almost 170,000 customers state-wide. That list continues to grow. As one of the crafters of the state law, I feel the law works as well as it does because of the exemptions we put in place. Protecting privacy is a paramount concern of mine, but allowing companies to effectively do business is another. As we all know, each state is different and prosperous industries vary. We put these exemptions in place after a great deal of discussions, testimony, and various studies. Removing those exemptions at the federal level, now, I feel would be a mistake. States need the ability to structure their laws to effectively meet the needs of their residents.

I am concerned with the Commission's decision to regulate intrastate phone calls and supercede these state exemptions. Section 3 of H.R. 395 clearly states, "*In issuing such rule, the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(b)).*" Considering the FTC did not promulgate any rule that supercedes existing state law, I am curious as to why the FCC would choose to do so?


In the FCC Report and Order, FCC 03-153, dated June 26th, I found a number of discrepancies in the decisions the Commission made in regards to the Do-Not-Call rules. In this report, the FCC notes lengthy debate over whether the Commission cannot or should not preempt state laws (No. 78-85 in the Discussion Section), even noting that many states have effectively enforced their Do-Not-Call legislation. However, you conclude "*the federal rules constitute a floor, and therefore would supersede all less restrictive state do-not-call rules.*" If maintaining consistency with the FTC rules and supporting states' no-solicitation laws is a paramount goal of the FCC, I would like to know why you came to that decision?

QCB
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Telecommunications
PI
MKP
3264

I support the intent of the national Do-Not-Call list. However, I am concerned the rule promulgation of this legislation stamps on states' rights. Additionally, I worry this new ruling would contradict all the hard work Florida has done in this area over the past 15 years.

Your prompt response to this letter is very much appreciated. I look forward to hearing from you.

Sincerely,


Ginny Brown-Waite
Member of Congress

GBW:ajw



CHRM
OLA
BT



U.S. Congresswoman

Ginny Brown-Waite

Representing Florida's Fifth District

To: Chairman Michael Powell

Fax: 202-418-2801

Re: Do-Not-Call Rule

Date: July 31, 2003

No. of pgs. (incl. cover): 3

Notes:

Hard copy to follow

1516 Longworth House Office Building
Washington, D.C. 20515
(Office) 202-225-1002 (Fax) 202-226-6559
www.house.gov/brown-waite